

## APPEAL NO. 93500

On May 4, 1993, a contested case hearing was held in (city), Texas, with (hearing officer) presiding as the hearing officer. The hearing was held under the provisions of the Texas Workers' Compensation Act, TEX. REV. CIV. STAT. ANN. art. 8308-1.01 *et seq.* (Vernon Supp. 1993) (1989 Act). The hearing was held to determine the impairment rating of the appellant (claimant herein). The hearing officer held that the claimant has a 10% impairment rating as assigned by the designated doctor selected by the Texas Workers' Compensation Commission (Commission), and that the claimant is entitled to impairment income benefits for 30 weeks. The claimant disagrees with the impairment rating determined by the hearing officer. The respondent (carrier herein) responds that the impairment rating determined by the hearing officer is supported by the evidence.

## DECISION

The decision of the hearing officer is affirmed.

The decision of the hearing officer was sent to the parties on May 18, 1993. The claimant filed two requests for review. The claimant does not state when he received the decision. Accordingly, the claimant is deemed to have received the decision five days after the date mailed. Tex. W.C. Comm'n, 28 TEX. ADMIN CODE § 102.5(h) (Rule 102.5(h)). The first request for review, received by the Commission on June 3, 1993, was filed within 15 days of the date of receipt of the decision and will be considered. Article 8308-6.41(a); Rule 143.3. Contrary to the carrier's assertion, the first request for review is more than just an "intention to appeal" the hearing officer's decision. It disputes the impairment rating assigned by the designated doctor by indicating a higher impairment rating should be given for loss of range of motion. The second request for review is postmarked June 11, 1993, was received by the Commission on June 18, 1993, and was not timely filed. Thus, the second request for review will not be considered. Texas Workers' Compensation Commission Appeal No. 92147, decided May 29, 1992.

The claimant testified that he injured his waist at work on February 26, 1992. The parties stipulated that the claimant sustained a compensable injury while in the course and scope of his employment with his employer, the (company), on February 26, 1992, and that the carrier was the employer's workers' compensation insurance carrier on that date.

In a Report of Medical Evaluation (TWCC-69), (Dr. N), the claimant's treating doctor, certified that the claimant reached MMI on August 24, 1992, with a 25 percent whole body impairment rating. His diagnostic impression was that the claimant had a lumbosacral strain and a lumbar "HNP," which he described as a "soft tissue injury to the lumbar spine with herniated disk."

At the request of the carrier, the claimant was examined by (Dr. E) on November 25, 1992. Dr. E's narrative report indicated that he examined the claimant, performed range of motion testing, and reviewed medical reports; however, he stated that he did not have the

benefit of reviewing the claimant's MRI. In a TWCC-69, Dr. E certified that the claimant reached MMI on November 26, 1992, with a five percent whole body impairment rating. He said he saw no abnormalities on observation of the claimant's lower back.

On December 4, 1992, the Commission selected (Dr. O) as the designated doctor and directed him to examine the claimant for the purpose of assigning an impairment rating. In a four page narrative report dated January 26, 1993, Dr. O set forth his findings on physical examination of the claimant; his findings on range of motion testing; and his review of the claimant's medical records, reports, and MRI. Dr. O diagnosed the claimant's condition as lumbar strain and lumbar discogenic syndrome. In a TWCC-69 dated January 26, 1993, Dr. O certified that the claimant reached MMI on January 26, 1993, with a 10% whole body impairment rating.

The hearing officer determined that the claimant reached MMI on August 24, 1992, with a 10% whole body impairment rating, and further determined that the 10% impairment rating assigned by Dr. O, the designated doctor, is not contrary to the great weight of the other medical evidence. The claimant does not dispute the MMI date found by the hearing officer (which was the MMI date certified by the treating doctor), but does dispute the 10% impairment rating.

Pursuant to Article 8308-4.26(g), the report of the designated doctor selected by the Commission has presumptive weight and the Commission must base the impairment rating on that report unless the great weight of the other medical evidence is to the contrary. Pursuant to Article 8308-6.34(e), the hearing officer is the sole judge of the relevance and materiality of the evidence offered and of the weight and credibility to be given to the evidence. It is not unusual to have disagreement or some degree of disparity between the reports of various doctors who have treated or examined an injured worker. See Texas Workers' Compensation Commission Appeal No. 93105, decided March 26, 1993, and decisions cited therein. In Texas Workers' Compensation Commission Appeal No. 92412, decided September 28, 1992, we pointed out that it is not just equally balancing evidence or a preponderance of the evidence that can overcome the presumptive weight given the designated doctor's report, rather, such other medical evidence must be determined to be the "great weight" of the medical evidence contrary to the report. Moreover, no other doctor's report, including that of the treating doctor, is accorded the special presumptive weight given to the designated doctor's report. See Texas Workers' Compensation Commission Appeal No. 92366, decided September 10, 1992. In the present case, the hearing officer found that the great weight of the other medical evidence was not contrary to the impairment rating assigned by the designated doctor and based the claimant's impairment rating on the rating assigned by the designated doctor. Having reviewed the record, we conclude that the hearing officer's decision is supported by sufficient evidence and is in accordance with the provisions of Article 8308-4.26.

The decision of the hearing officer is affirmed.

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Robert W. Potts  
Appeals Judge

CONCUR:

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Thomas A. Knapp  
Appeals Judge

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Gary L. Kilgore  
Appeals Judge